IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Central Excise Application No. 41 of 2000

Asian Paints Ltd. .. Applicant
V/s.
Union of India & Anr. .. Respondents

Mr. D.B. Shroff with Mr. Daruwala i/b. M/s. Crawford Bayley & Co. for the Applicant

Ms. S.V. Bharucha for the Respondents

CORAM : S. RADHAKRISHNAN &
J.H. BHATIA, JJ.
DATED : 29.06.2005.

P.C.:-

1. Heard the learned counsel for the Applicant and the Respondents. We direct the Tribunal to refer the following substantial questions of law and set out the statement of facts as provided under Section 35G of the Central Excise Act, 1944 as it stood then:-

(A) Whether the exemption contained in Notification 201/79 dated 4th June, 1979 issued under the erstwhile rule 8(1) permits a manufacturer to avail set-off on inputs used in the manufacture of dutiable final products (paints) if it passes through an exempted intermediate product (alkyd resins) and the intermediate product is removed from one factory to another of the same manufacturer and ultimately consumed in dutiable final products?

(B) Whether the exemption notification distinguishes between a manufacturer who produces both the intermediate products and the final products within the same factory and a manufacturer who produces the intermediate product in one factory and transfers it to another factory of his own or processor for further manufacturer of dutiable final product?

(C) Whether a manufacturer having different factories and by an integrated approach to production planning, materials procurement, inventory control and distribution would be an "integrated unit" in the light of the CBEC Circular

F. No. 211/24/84-LE 6 dated 11/5/82 and the

Supreme Court Judgment in ACC Chaibasa v. Workmen - AIR 1960 SC 56 and the unreported judgment of the Gujarat High Court in SCA No. 2364 of 1984 between Asian Paints (India) Limited, Dist. Bharuch and Another V/s. the Regional Provident Fund Commissioner, Gujarat State and Another more particularly because the Central Excise Act and the Rules framed thereunder do not define any "integrated unit"?

(D) Whether the Tribunal's decision is legal and proper in denying the exemption to the applicants merely because no procedure was prescribed for the movement intermediate product though under similar circumstances the credit was allowed to CCE V/s. MRF Ltd. - 1987 (32) ELT 579 (T)?

(E) Whether Tribunal is correct in holding that the extended period of limitation will apply even to that period (13th October, 1981 to 11th July, 1982) after the applicants informed the Department in detail the procedure followed by their letter dated 13th October, 1981?

(F) Whether in the fact and circumstances of the case where there is no contumacious conduct, imposition of any penalty is justified and proper?

2. Application is accordingly allowed.

(S. RADHAKRISHNAN, J.)

(J.H. BHATIA, J.)